

APPENDIX F

MEMORANDUM OF AGREEMENT (MOA)

**STH 26
JANESVILLE TO WATERTOWN
ROCK, JEFFERSON, AND DODGE COUNTIES
PROJECT I.D. 1390-04-00**

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE ARMY CORPS OF ENGINEERS AND
THE WISCONSIN STATE HISTORIC PRESERVATION OFFICE
REGARDING CONSTRUCTION OF
USH 26 FROM JANESVILLE TO WATERTOWN
PURSUANT TO 36CFR800.6(a)**

Whereas, the Federal Highway Administration (FHWA) and the U.S. Army Corps of Engineers (COE) has determined that construction of STH 26 (Project ID 1390-04-00/WHS: 99-1489/DO/JE/RO) between Janesville and Watertown in Rock, Jefferson, and Dodge Counties to a four lane highway has an adverse effect on historic properties that are eligible for inclusion in the National Register of Historic Places (NRHP), and has consulted with the Wisconsin State Historic Preservation Office (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

Whereas, the FHWA may provide funding for the project and is the lead federal agency that requested the Army Corps of Engineers (COE) to be a co-operating agency; and

Whereas, the Menominee Indian Tribe of Wisconsin, the Oneida Nation, the Ho-Chunk Nation, and the Sac and Fox Confederation (Consulting Tribes) have participated in consultation, have been informed of the project's effects upon historic properties, and declined to participate in this Memorandum of Agreement; and

Whereas, the Wisconsin Department of Transportation (WisDOT) has participated in consultation and are "Invited Signatories", pursuant to 36 CFR § 800.6(c)(2)(iii) in this Memorandum of Agreement (MOA); and

Whereas, the consulting parties agree that it is in the public interest to expend funds to implement this project through the documentation/mitigation and recovery of significant information from archaeological sites to mitigate the effects of the project; and

Whereas, the Advisory Council on Historic Preservation was notified August 24, 2004; and had currently delegated authority to Wisconsin SHPO

Whereas, the Area of Potential Effect (APE) included several corridors of sufficient width to provide adequate consideration of potential effects; and

Whereas, all buildings and/or other structures within the Area of Potential Effect (APE) have been evaluated for eligibility for listing on the National Register of Historic

Places (NRHP). No buildings and/or other structures on or eligible for listing on the NRHP are located within the APE; and

Whereas, the archeological sites determined to be eligible and the four (4) sites to be determined eligible are listed under Stipulations of this document; and

Now, therefore, FHWA, the COE, and the Wisconsin SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

FHWA shall ensure that the following stipulations are carried out:

1. The WisDOT will ensure that the recovery plans, entitled, *Data Recovery at the Finch Site (47JE902)*, *Jefferson County, Wisconsin*; *Data Recovery at the Lee Rickerman Site (47JE1140)*, *Jefferson County, Wisconsin*; *Data Recovery at the Sauerhammer Site (47JE185)*, *Jefferson County, Wisconsin*; and, *Data Recovery at the Strauss-Neis Site (47JE1142)*, *Jefferson County, Wisconsin*, will be implemented in coordination with those project activities that will disturb archaeological resources.
2. The WisDOT will conduct further testing at four archaeological sites--*Bower's Lake Site (47RO-209)*, *Spangler Brothers Site 947JE-1091*, *Schlender Site (47DO-670)*, and the *Walsh Site (47DO-671)*-- to determine their eligibility for the NRHP once landowner permission can be obtained or WisDOT acquires the land: If a site is determined eligible for the NRHP and cannot be avoided through design modification, a Data Recovery Plan will be prepared in consultation with the SHPO within three (3) months after the site is determined eligible. The Plan will demonstrate the mitigation measures to be implemented and will outline the research questions and the information that will be obtained. The plan will include the methodology of the research design used to mitigate the project's effect upon the archaeological resource. The data recovery plan will be implemented prior to and in coordination with those project activities that could disturb the site in accordance with 36 CFR 800.6. If a site is determined eligible for the NRHP and can be avoided through design modification, it will be protected as in Stipulation 3 below.
3. The WisDOT will erect temporary fencing if necessary at six archaeological sites prior to construction to ensure that these sites are not inadvertently disturbed during construction: *Bumbard School Site (47JE-1076)*, *Pitzner I Site (47JE-677)*, *Stade Site (47JE-1125)*, *Beilke Site (47JE-362)*, *Hinstorff Site 947JE-1068*, and the *Seneca Site (47DO-668)*.
4. The WisDOT construction manager shall immediately notify the WisDOT Bureau of Equity and Environmental Services (BEES) of any archaeological properties

inadvertently discovered during construction activity. BEES will notify the SHPO and Consulting Tribes immediately. The construction project manager will stop construction activities in the area immediately and fence off the site area. Through an expedited consultation with the SHPO and Consulting Tribes pursuant to 36 CFR §800.13(b), the discovery(ies) will be investigated to determine the eligibility for inclusion in the NRHP, a recommendation will be provided regarding treatment to resolve project effects, including avoidance and minimization, and if needed a Data Recovery Plan will be developed, and mitigation will be implemented. The site area will remain fenced until the data recovery is completed. Upon completion of the data recovery, the archaeologist will remove the protective fencing and notify BEES and the construction project manager that construction may again proceed in that area.

5. If human remains and associated funerary objects are inadvertently encountered during data recovery or construction activity, all construction activity will stop immediately and the project manager will notify BEES. BEES will immediately notify the SHPO, FHWA, Wisconsin Burial Sites Preservation Office (BSPO), and Consulting Tribes. Analysis by a qualified skeletal analyst will be in compliance with Wisconsin Administrative Code § HS 2.02(12) and HS 2.04(60), and Wis. Stat. §157.70 and in accordance with the Wisconsin Intertribal Repatriation Committee/WisDOT protocol provisions on burial treatment.
6. WisDOT will ensure that construction in areas adjacent to the mortuary areas where human remains are located during data recovery or construction activity are monitored by a qualified archaeologist, as defined in Wisconsin Administrative Code § HS 2, (1)(1)(1991) Wis. Stat. §157.70.
7. The WisDOT will ensure completion of archaeological analysis at all wetland mitigation sites, borrow areas, batch plant sites, waste sites or staging areas utilized as a result of this project, any areas that will be impacted as a result of design changes, and those areas of the current corridor not analyzed due to landowner refusal to access property (including the previously identified *Bower's Lake Site (47RO-209)*, *Spangler Brothers Site (47JE-1091)*, *Schlender Site (47DO-670)*, and *Walsh Site (47DO-671)*). This analysis will follow the Section 106 and NEPA sequencing process in consultation with the SHPO and all consulting parties. This sequence will consist of identification of sites followed by avoidance of impacts to the site(s) if possible, followed by determining NRHP eligibility for those sites that cannot be avoided. For those sites found to be eligible a further analysis of avoidance will be completed, followed by an analysis of minimization of impacts on the site(s) if it cannot be avoided. If minimization is deemed inadequate to avoid affect, a Data Recovery Plan will be prepared in consultation with the SHPO and all consulting parties within three (3) months after the site is determined eligible. The Plan will outline the mitigation measures to be implemented, the methodology of recovery used to mitigate the project effects on the site, the research questions to be addressed and potential information that may be obtained. The data recovery plan will be

implemented prior to project activities that could disturb the site in accordance with 36 CFR 800.6

8. The WisDOT will ensure that all construction contracts contain language describing potential delays to the contractor, in the event of an archaeological discovery or the need for traditional tribal activities during construction or monitoring. Language will pertain to the construction project manager stopping construction activities in the area immediately and fencing off the site area; non-working hours protection if deemed necessary, notification of the SHPO and Consulting Tribes; the expedited consultation with the SHPO and Consulting Tribes pursuant to 36 CFR 800.13(b); the determination of the discovery(ies)' eligibility for inclusion in the NRHP; a recommendation for the treatment to resolve project impacts, and the development and implementation of a Data Recovery Plan; that the site area will remain fenced until the data recovery is completed; and, that upon completion of the data recovery, the archaeologist will remove the protective fencing and notify the WisDOT construction project manager that construction may again proceed in that area.
9. The WisDOT will ensure that an archaeological technical report detailing the results of all field investigations and analysis will be submitted to SHPO for review and approval within one year of completion of mitigation. Copies will be provided to the FHWA, COE, BEES. Interim reports will be provided to the COE, the SHPO, BEES and interested Tribes every six (6) months until the final report is completed. All parties have thirty (30) day comment period upon receipt of the report to respond with any concerns.

Public Interpretation

1. The WisDOT shall ensure that public interpretation of the historic properties associated with the STH 26 project, not to exceed \$25,000. Funding for the public interpretation will be obtained from the budget developed for the Data Recovery Plan. If additional funding is required, consultation will be initiated with WisDOT and a supplementary adjustment may be required.
2. The WisDOT shall form a committee, known as the "Public Interpretation Committee" (PIC) consisting of the consulting parties. The consulting parties will be comprised of FHWA, WisDOT, SHPO, Consulting Tribes, and archaeologist.
3. The PIC shall emphasize the archaeology of Southeastern Wisconsin and the Rock River Valley, integrating and highlighting the results of the archaeological and historical research conducted for the STH 26 project.
4. The PIC shall incorporate in the Plan the mechanism for presenting the public interpretation that may include but not be limited to museum exhibit style display, a public area display, web site page, educational/classroom material. The PIC shall incorporate locations for installation of the public interpretation into the Plan. Such

locations may include the preserved mound area, the local visitor's center, and/or other locations that may offer good visibility and/or walk-in exposure.

5. The PIC shall be established within one (1) year after the signing of the MOA.
6. The WisDOT shall implement the Plan within one (1) year after mitigation of the archaeological sites is complete.

OTHER TERMS AND CONDITIONS

Curation

WisDOT will ensure that all records and materials will be curated in accordance with the Secretary of Interior Guidelines, 36 CFR 79.

Reports

1. WisDOT will ensure that an interim report of findings will be submitted to the SHPO within six (6) months of completion of the data recovery, which consists of field and laboratory work. Copies of all reports will also be sent to the aforementioned parties in Stipulation 10.
2. Reports submitted to Burial Sites Preservation Office (BSPO) regarding human remains will be done according to Wisconsin Administrative Code §§HS 2.04(8) and HS2.04 (10). WisDOT will ensure that reports resulting from all activities pursuant to the MOA are provided to the SHPO, COE and Consulting Parties.
3. Archaeological reports will be completed within one year of completion of mitigation. All reports will be in compliance with contemporary professional standards and with the *Department of Interior's Format Standards for Final Reports of Data Recovery Programs* (47 FR 5377-79). Precise locational data may be provided only in a separate appendix if it appears that its release could jeopardize the security of the archaeological site(s), pursuant to applicable state and federal laws, rules, and regulations.

Professional Qualifications

WisDOT shall ensure that all archaeological and historic preservation work conducted pursuant to this agreement is carried out by or under the supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR 61). These guidelines include field research, analysis, report preparation, and curation.

Monitoring

On or before January 1 of each year until the terms of this agreement have been fulfilled, FHWA or its agent shall prepare and provide an annual report to the SHPO addressing completion of the stipulations in this MOA. The parties to this MOA shall also consult annually over the life of this MOA to review its implementation to determine whether it should continue in force, be amended, or be terminated.

Database Input

WisDOT will ensure that information resulting from the archaeological survey and data recovery is provided to the State Archaeologist in a form acceptable for inclusion in the WHS, Historic Preservation Division database.

Dispute Resolution

1. Should any party/signatory to this MOA object to any action carried out or proposed by the FHWA with respect to STH 26 project or implementation of this MOA, the FHWA shall consult with the objecting party/signatory to resolve the objection. The signatories shall resolve disputes regarding the completion of the terms of the Agreement in compliance with 800.6(a)(1). If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council to assist. If after initiating such consultation the FHWA determines that the objection cannot be resolved through consultation, the FHWA shall forward all documentation relevant to the objection to the Council, including the FHWA's proposed response to the objection, pursuant to 36 CFR § 800.7(a).
2. Disputes regarding disposition of human remains will be in accordance with stipulations set forth in Wis. Stat. § 157.70.

Amending or Terminating

Any party to this agreement may propose to the agency that the agreement be amended or terminated, whereupon the agency shall consult with the other parties to this agreement to consider such an action. The execution of any such action shall be governed by 36 CFR § 800.6(c)(1)

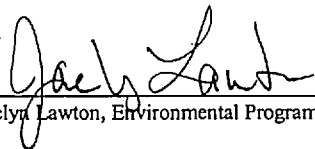
Sunset Provisions

If the terms of this Agreement have not been implemented by January 1, 2020, this agreement shall be considered null and void. In such event, the agency shall so notify the parties to this agreement, and if it chooses to continue with the undertaking, shall reinitiate review of the undertaking in accordance with 36 CFR Part 800. **Due to the length and staging of this project, real estate acquisition and construction is currently slated to occur along the corridor from 2008 to 2018. Excavation of the**

sites to be impacted will also fall within this window of time. For this reason the length of time for the sunset provisions is extended.

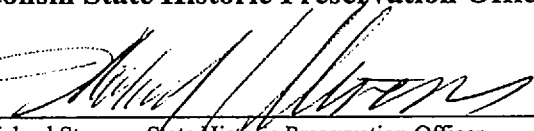
Execution of the Agreement by FHWA, the WisDOT, and the Wisconsin SHPO, and implementation of its terms, evidence that the FHWA has afforded the SHPO an opportunity to comment on the STH 26 reconstruction project and its effects on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

Federal Highway Administration

By: 
Jaclyn Lawton, Environmental Programs Engineer

Date: May 3, 2005

Wisconsin State Historic Preservation Office

By: 
Michael Stevens, State Historic Preservation Officer

Date: May 23, 2005


United States Army Corps of Engineers

By: _____
Robert J. Whiting, Regulatory Branch Chief

Date: _____

CONCUR:

Wisconsin Department of Transportation

By: 
Eugene S. Johnson, WisDOT Historic Preservation Officer

Date: 4/26/05

Memorandum of Agreement
STH 26, Junesville to Watertown
ID: 1390-04-00; SHPO#: 99-1489/DO/JE/RO

page 7 of 7

sites to be impacted will also fall within this window of time. For this reason the length of time for the sunset provisions is extended.

Execution of the Agreement by FHWA, the WisDOT, and the Wisconsin SHPO, and implementation of its terms, evidence that the FHWA has afforded the SHPO an opportunity to comment on the STH 26 reconstruction project and its effects on historic properties, and that FHWA has taken into account the effects of the undertaking on historic properties.

Federal Highway Administration

By: _____
Jaclyn Lawton, Environmental Programs Engineer

Date: _____

Wisconsin State Historic Preservation Office

By: _____
Michael Stevens, State Historic Preservation Officer

Date: _____

United States Army Corps of Engineers

By: _____
Robert J. Whiting, Regulatory Branch Chief

Date: May 27, 05

CONCUR:

Wisconsin Department of Transportation

By: _____
Eugene S. Johnson, WisDOT Historic Preservation Officer

Date: _____